



# भारत का राजपत्र The Gazette of India

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NEW DELHI, SATURDAY, OCTOBER 10, 1998/ASVINA 18, 1920

इस भाग में निम्न पृष्ठ संख्या दी जाती है जिससे कि यह जलन संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than the Administrations of Union  
Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 7 सितम्बर, 1998

आ. ध. 103.—यतः निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्विन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा अपेक्षित रीति से दाखिल करने में असफल रहा है ; और

यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधानसभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहिता घोषित करता है :—

## सारणी

क्र. सं. निर्वाचन का विवरण	निर्वाचन-क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरर्थता का कारण
1	2	3	5
1. त्रिपुरा विधान सभा के लिए माधारण निर्वाचन, 1998	2—मोहनपुर विधानसभा निर्वाचन-क्षेत्र	श्री विजय देवबर्मा, ग्राम-कालागाचिया पो. धो. कालागाचिया टी एस्टेट, थाना सिधाई, त्रिपुरा ( पश्चिम )	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
2. ---वही---	10—मजलिसपुर विधान सभा निर्वाचन-क्षेत्र	श्री मधुसूदन देव बर्मा, ग्राम-गाछियापारा, थाना-जीरानिया, जिला-पश्चिम त्रिपुरा, त्रिपुरा	---वही---
3. ---वही---	13—प्रतापनगर (अ. जा.) विधान सभा निर्वाचन क्षेत्र	श्री काली किशोर दास ग्राम-उत्तर जोगेन्द्रनगर, ( आदर्श कॉलोनी ), पो. जोगेन्द्रनगर, अंगरतला	---वही---
4. ---वही---	18—चारिलाम (अ. ज. जा.) विधानसभा निर्वाचन क्षेत्र	श्रीमती रनिता संगमा, ग्राम-बासूदेवपाड़ा, कमलपुर, उत्तर त्रिपुरा	---वही---
5. ---वही---	20—नगलचार (अ. जा.) विधानसभा निर्वाचन क्षेत्र	श्री सुभ्रत सरकार, पूर्वी लक्ष्मी बिल, विशालगढ़, त्रिपुरा	---वही---
6. ---वही---	21—सोनामुरा विधान सभा निर्वाचन क्षेत्र	श्री स्वपन चन्द्र साहा, ग्राम-धालीग्राई, सोनामुरा, त्रिपुरा	---वही---
7. ---वही---	24—खोवाई विधान सभा निर्वाचन क्षेत्र	श्री कृष्ण धान पाल, ग्राम-मास्टरपाड़ा ( जम्बूरा ), पो. खोवाई कोर्ट, त्रिपुरा	---वही---
8. ---वही---	---वही---	श्री अरुण कुमार पाल, ग्राम-बाड़ाबिल, पो. -सिधीचेरा, खोवाई, त्रिपुरा ( पश्चिम )	---वही---
9. ---वही---	---वही---	श्री गिरीन्द्र नामसूद, ग्राम-पूर्वा सिधीचेरा, पो. बाचाईवाड़ी, खोवाई, त्रिपुरा ( पश्चिम )	---वही---
10. ---वही---	25—आशमबाड़ी (अ. ज. जा.) विधान सभा निर्वाचन क्षेत्र,	श्री उमेश बर्मा, ग्राम-विश्वमाणी, अखावाड़ी, पो. -गोपालनगर, थाना-खोवाई, त्रिपुरा	---वही---

1	2	3	4	5
11.	त्रिपुरा विधान सभा के लिए साधारण निर्वाचन, 1998	26—प्रमोदनगर विधानसभा निर्वाचन क्षेत्र	श्री बहुराय (बहुचन्द्र), देवधर्मा, ग्राम-सियोरटाली, पो. व थाना—खोवाई, त्रिपुरा	निर्वाचन व्ययों का कोई भी लेख, दाखिल करने में असफल रहे।
12.	—वही—	28—कृष्णापुर (अ.ज.जा.) विधानसभा निर्वाचन क्षेत्र	श्री नामजोय रिश्रंग, ग्राम मसुराय चावपाड़ा, पो. कमलचैररा, थाना-अम्बासा, त्रिपुरा	—वही—

[सं. 76/त्रिपुरा / 98]

आदेश से,  
के. आर. प्रसाध, सचिवELECTION COMMISSION OF INDIA  
ORDER

New Delhi, the 7th September, 1998

O.N. 103.—Whereas the Election Commission is satisfied that each of the contesting candidate specified in column (4) of the Table below at the election specified in column (2), held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses/failed to lodge an account in the manner as required by the Representation of the People Act, 1951 and Rules and Orders made thereunder as shown in column (5) of the said Table; and

Whereas, the said candidates have not furnished any reason or explanation for the said failure even after due notice and the Election Commission is thus satisfied that they have no good reason or any justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order.

TABLE

Sl. No.	Particulars of election	No. & Name of constituency	Name & Address of contesting candidate	Reason for disqualification
1	2	3	4	5
1.	General Election to Tripura Legislative Assembly, 1998.	2—Mohanpur Assembly Constituency	Sh. Bijoy Deb Barma, Vill.—Kalagachia, P.O.—Kalagachia T.E., P.S.—Sidhai, Tripuraf(West).	Failed to lodge any account of election expenses.
2.	-do-	10—Majlishpur Assembly Constituency.	Sh. Madhu Sudhan Dev Barma, Vill.—Gachhia Para, P.S.—Jirania, Dist.—West Tripura, Tripura.	-do-
3.	-do-	13—Pratapgarh (SC) Assembly Constituency	Sh. Kali Kishore Das, Vill.—Uttar Jogendranagar, (Adarsha Colony), P.O.—Jogendranagar, Agartala.	-do-

1	2	3	4	5
4.	General Election to Tripura Legislative Assembly, 1998.	18-Charilam (ST) Assembly Constituency	Smt. Ranita Sangma, Vill.—Basudebpara, Kamalpur, North Tripura.	Failed to lodge account of election expenses.
5.	-do-	20-Nalchar (SC) Assembly Constituency	Sh. Subrata Sarkar, Purba Laxmi Bill, Bishalgarh, Tripura.	-do-
6.	-do-	21-Sonamura Assembly Constituency	Sh. Swapan Chandra Saha, Vill.—Dhaliai, Sonamura, Tripura.	-do-
7.	-do-	24-Khowai Assembly Constituency	Sh. Krishna Dhan Pal, Vill.—Masterpara, (Jambura), P.O.—Khowai Court, Tripura.	-do-
8.	-do-	-do-	Sh. Arun Kumar Paul, Vill.—Barabil, [ P.O.—Singhicherra, Khowai, Tripura (West). ]	-do-
9.	-do-	-do-	Sh. Girindra Namasudra, Vill.—Purba Singhicherra, P.O.—Bachaibari, Khowai, Tripura (West)	-do-
10.	-do-	25-Asharambari (ST) Assembly Constituency	Sh. Umesh Barma, Vill.—Biswamani, Akhrabari, P.O.—Gopalnagar, P.S.—Khowai, Tripura.	-do-
11.	-do-	26-Pramodnagar Assembly Constituency	Sh. Bahuroy (Bahu Chandra) Deb Barma, Vill.—Seoratali, P.O. & P.S.—Khowai, Tripura.	-do-
	-do-	28-Krishnapur (ST) Assembly Constituency	Sh. Namajoy Reang, Vill.—Masurai Chawpara, P.O.—Kamalacherra, P.S.—Ambassa, Tripura.	-do-

[No. 76/TP/98]  
By order,  
K. R. PRASAD, Secy.

आदेश

नई दिल्ली, 7 सितम्बर, 1998

Territory for a period of three years from the date of this order.

[No. 76/MEG/98]

By order,

K. R. PRASAD, Secy.

आदेश

नई दिल्ली, 7 सितम्बर, 1998

आ.अ. 104.—यतः निर्वाचन आयोग का समाधान हो गया है कि श्री अनिन्द्र चन्द्र राभा, श्यामनगर, श्यामनगर, मेघालय से निर्वाचन लड़ने वाले एक अभ्यर्थी जिन्होंने फरवरी, 1998 में हुए मेघालय विधान सभा के साधारण निर्वाचन के लिये 48-फूलबाड़ी (अ.ज.जा.) विधानसभा निर्वाचन क्षेत्र से निर्वाचन लड़ा था, लोक प्रतिनिधित्व अधिनियम, 1951 तथा उसके अधीन बनाये गये नियमों के अधीन अपने निर्वाचन-व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं; और

यतः, श्री अनिन्द्र चन्द्र राभा ने सम्यक् सूचना दिये जाने पर भी उक्त असफलता के लिये कोई कारण या स्पष्टीकरण नहीं दिया है और आयोग का यह समाधान हो गया है कि उक्त असफलता के लिये उनके पास कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10क के अनुसरण में निर्वाचन आयोग इसके द्वारा यह घोषणा करता है कि उक्त श्री अनिन्द्र चन्द्र राभा को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधानसभा या विधान परिषद के सदस्य चुने जाने और होने के लिये इस आदेश की तारीख से तीन वर्ष की कालावधि के लिये निरहित घोषित करता है।

[सं. 76/मेघा./98]

आदेश से,

के.आर. प्रसाद, सचिव

ORDER

New Delhi, the 7th September, 1998

O.N. 104.—Whereas, the Election Commission is thus satisfied that :—

Shri Anindra Ch. Rabha  
Shyamnagar,  
P.O. Shyamnagar,  
Meghalaya.

A contesting candidate for the general election to the Meghalaya Legislative Assembly held in February, 1998 from 48-Phulbari (ST) Assembly constituency, has failed to lodge his account of election expenses in the manner required by the Representation of the People Act, 1951 and Rules and orders made thereunder; and

Whereas, Shri Anindra Ch. Rabha, has not furnished any reason or explanation for the said failure even after due notice and the Commission is thus satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10-A of the Representation of the People Act, 1951, the Election Commission hereby declares the said Shri Anindra Ch. Rabha to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State or Union

आ.अ. 105.—यतः भारत निर्वाचन आयोग का समाधान हो गया है कि राष्ट्रीय राज्य क्षेत्र दिल्ली सं. 7-करोल बाग (अ.जा.) संसदीय निर्वाचन क्षेत्र से 1998 में हुए लोक सभा के साधारण निर्वाचन में निर्वाचन लड़ने वाले अभ्यर्थी श्री दुर्गा प्रसाद 4850, रेगड़पुरा, करोलबाग, नई दिल्ली ने लोक प्रतिनिधित्व अधिनियम, 1951 और उसके अधीन बनाये गये नियमों द्वारा यथा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यतः उक्त अभ्यर्थी ने सम्यक् सूचना दिये जाने पर भी असफलता के लिये या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिया गया अभ्यावेदन पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिये कोई पर्याप्त कारण या न्यायोचित्य नहीं है।

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में श्री दुर्गा प्रसाद को संसद के किसी भी सदन या किसी राज्य/क्षेत्र संघ राज्य की विधान सभा अथवा विधान परिषद का सदस्य चुने जाने और होने के लिये इस आदेश की तारीख से तीन वर्ष की कालावधि के लिये एतद्वारा निरहित घोषित करता है।

[सं. 76/दिल्ली/लोक.स./48(1)]

आदेश से,

के.आर. प्रसाद, सचिव

ORDER

New Delhi, the 7th September, 1998

O.N. 105.—Whereas the Election Commission is satisfied that Shri Durga Prasad, 4850, Reghar Pura, Karol Bagh, New Delhi a contesting candidate at the General Election to the House of People held in 1998 from 7-Karol Bagh (SC) Parliamentary Constituency in National Capital Territory of Delhi has failed to lodge any account of his election expenses as required by the Representation of People Act, 1951 and the rules made thereunder;

And whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representation made by him, if any, the Election Commission is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10-A of the said Act, the Election Commission hereby declares the said Shri Durga Prasad to be disqualified for being chosen as, and for being, a member of either House of the Parliament

or of the Legislative Assembly or Legislative Council of a State Union Territory for a period of three years from the date of this order.

[No. 76/DL-HP/98(1)]

By order,

K. R. PRASAD, Secy.

नई दिल्ली, 25 सितम्बर, 1998

आ.अ. 106.—निर्वाचन आयोग, लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में 22-बड़ौदा संसदीय निर्वाचन-क्षेत्र से लोक सभा के लिये श्री सत्यजीत सिंह जी गायकवाड़ के निर्वाचन को चुनौती देने वाली श्री जितेन्द्र रतिलाल सुखराडिया द्वारा दाखिल की गई 1996 की याचिका सं. 1 में अहमदाबाद स्थित गुजरात उच्च न्यायालय के तारीख 18-6-97 के निर्णय को एतद्वारा प्रकाशित करता है।

(निर्णय/आदेश अधिसूचना के अंग्रेजी भाग में छापा है)

[सं. 82/गुज—लो.स./ (1/96)/98]

आदेश से,

अनूप के. पुजारी, प्रधान-सचिव

New Delhi, the 25th September, 1998

O.N. 106.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated 18-6-97 of the High Court of Gujarat at Ahmedabad in Election Petition No. 1 of 1996 filed by Shri Jitendra Ratilal Shukhadia challenging the election of Shri Satyajit Singh D. Gaekwad to the House of the People from 22-Baroda Parliamentary Constituency.

# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD ELECTION PETITION NO. 1 of 1996

1. Jitendra Ratilal Shukhadia  
E-710, Kunj Resi Kam Plaza,  
Palace Road, Vadodara

.. Petitioner

Versus

1. Kanchanbhai Shanabhai Rana  
5-E Shri Hari Sidha Vatika  
Society, Gorva Refinery Road  
Vadodara

2. Gaekwad Satyajitsinh Dilipsinh  
'Chitrakut Bungalow' Opp. Polo  
Ground, Beside Lal Bhavan,  
Vadodara

3. Gandotra S. M.  
5, Mahavir Colony  
Sindhavai Mata Road,  
Vadodara

4. Jagdish Singh Gambhir Singh Chauhan  
A-54, Jay Ambe Society  
Opp. Gorva Workshop, Subhanpura  
Vadodara

5. Jadhav Arun Kashiram  
Dilaram Bungalows, Alkapuri,  
Vadodara

6. S. L. Patel  
11/610, Shakti Nagar  
Gujarat Housing Board,  
Gorva Road, Vadodara

7. Patel Kamleshbhai Ramanbhai  
Untia Medhad P.O. Gosindra,  
Vadodara

8. Patel Natvarlal Lalbhai  
B-9, Parimal Society No. 3  
Nr. Sayajipark Bus Stand,  
Ajwa Road, Vadodara

9. Patel Pravinchandra MangalBhai  
Hanuman Falja, Juna Bazar  
(Sarbhawanwala) AAT-PO-Karjan,  
Vadodara

10. Patel Vitthalbhai Kashibhai  
(Latipurawala), Latipura  
Padra Vadodara

11. Piyushbhai Lalajibhai Vaghela  
Laxmipuram Apartment,  
Block No. C-17, 4th Floor,  
Shri Ali Shankracharya Marg  
Vadodara

12. Madhubhai ShriVastav  
13-A Prabhat Society  
Waghodia Road, Vadodara

13. Maruti Sudamji Maharaj  
HiraShakti Mata's Temple,  
Kidvari Nagar Society Varasia  
Vadodara

14. Mukeshbhai Chandulal Patel  
Hati Pole, Rajmahal Road,  
Vadodara

15. Meghvani Laxmanbhai Roopchand  
B-34, Rupal Society, Varasia  
Vadodara-6

16. Modi Daxesh Chandrakatbhai  
17, State Bank Society  
Karnelibaug, Vadodara-18

17. Mohanlal Patel  
Pushpakunj, Kabir Mandir,  
Hari Miya's Sara Baranpura,  
Vadodara

18. Ramanbhai Dhurabhai Patel  
Dolatpura, P.O. Vankaneda, Savli  
Vadodara

19. Varma Vikramsinh Laxmichand  
18-B, Manek Park Society,  
V.I.P. Road, Karnelibaug,  
Vadodara

20. Vyas Amit  
At 12, Pratapkunj Society,  
Karnelibaug, Vadodara

21. Vyas Prafullchandra Jayendra Kumar  
Sardar Bazar Road, Thakkar  
Nivas, 3rd Floor, Fatehgani,  
Vadodara

22. Sardar Ranjitsinh Arjunsinh  
Harish Petrol Pump B/H, Chandroday  
Society Saraswati Auto Garage,  
Vadodara

23. Saroj Ramnallash Ramnareshbhai  
101, Shri Kishan App. No. 2,  
Opp. Kothi Police Parade Ground  
Raopura, Vadodara

24. Sindha Ranjitsinh Babubhai  
Post Vadu, Padra  
Vadodara

25. Subhanginiraje Ranjitsinh Gaekwad  
Laxmi Vilas Palace  
Vadodara

26. Harish Madhukar Jamdar  
Wadi, Khedkar Falla  
Vadodara

... Respondents

CORAM : Mr. Justice H. R. Shelat

Date of Decision : 18-6-1997

ORAL Judgement

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Election Petition No. 1 of 1996

For Approval and Signature :

Hon'ble Mr. Justice H. R. Shelat

- |  |     |
|--|-----|
| 1. Whether Reporters of Local Papers may be allowed to see the judgements ?  | Yes |
| 2. To be referred to the Reporters or not ?  | No  |
| 3. Whether their Lordships wish to see the fair copy of the judgement ?  | No  |
| 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? | No  |
| 5. Whether it is to be circulated to the Civil Judge ?   | No  |

Jitendra Ratilal Sukhadia

... Petitioner

versus

Kanahanbhai Shanabhai Rana and 25 others ... Opponents

APPEARANCE :

Mr. S. B. Vakil, Advocate —for the Petitioner,

Served by DS—for Respondents No. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

Mr. Tushar Mehta with Mr. M. K. Vakharia—for Respondent No. 2

CORAM : Mr. Justice H. R. Shelat

Date of decision : 18th June, 1997

ORAL JUDGEMENT

By this petition, the petitioner after being defeated at the Lok Sabha (House of People election, held in the month of May 1996, from 22-Baroda Parliamentary Constituency, by a narrow margin of 17 votes only, has called the election of that constituency in question. In order to appreciate the rival contentions, the petitioner's case in brief may be stated.

2. As the term of the House of People (Lok Sabha) was to be over and fresh election thereof was to be held, necessary notification was issued under Section 14 of the Representation of People's Act (for short the ROPA) on 22nd March 1996. For the different constituencies the dates for filing the nomination forms, scrutiny, withdrawal thereof as well as polling day were fixed. So far as 22-Baroda Parliamentary Constituency is concerned, 3rd April 1996 was the last date for submission of the nomination forms, and the date of scrutiny was 4th April 1996. The last day for withdrawal of the nomination paper was 6th April 1996. The polling was to be held on 2nd May 1996. The petitioner sponsored by Bharatiya Janata Party, the respondent No. 2 sponsored by the Congress Party, and respondents No. 1 and 3 to 26 filed their nomination forms so as to contest the election from 22-Baroda Parliamentary Constituency. As notified on 2nd May 1996, the polling was held for the constituency, and not all the 1396167 but

437226 voters exercised their franchise. On 8th May 1996 and 9th May, 1996 the counting work was taken on hand and on 10th May 1996 at 00-30 hours the result was declared. The respondent No. 2 secured 131248 votes, while the petitioner secured 131231 votes. Rest of the candidates were lagging far behind. The Returning Officer then declared the respondent No. 2 elected by a margin of 17 votes. The petitioner found that there were serious illegalities and irregularities in the counting of votes. At the time of counting, in counting halls or rooms necessary arrangements to check overcrowding and facilitating the agents of the candidates to smoothly and conveniently oversee and supervise were not made. No one could see whether counting was being correctly made and decisions taken were right. Even there was no raised platform for the Returning Officer. The constituency for the Lok Sabha election was consisting of 7 segments, viz., 7 Vidhan Sabha (Legislative Assembly) constituencies Nos. 146 to 152, one of which was Sayajinji Constituency. The counting of that constituency was carried out in Rooms Nos. 33 and 35 of the Polytechnic College, Maharaja Sayajirao University, Shastri Bridge Baroda. In room No. 33, 12 tables were placed while in room No. 35, 20 tables were kept. Both the rooms were very small and there were in each room more than 200 persons namely counting staff, Returning Officers, police staff, agents of all the candidates etc. The agents were kept at a distance of 3 ft. on the other side of mosquito's net. The counting process was simultaneous and too fast to enable the agents to verify, or check or judge or discern. The ballot papers were gathered into different bunches each of 25 ballot but numbers of ballot papers in each bunch was not beyond doubt. From some segments, when ballot papers were actually counted, more or less ballot papers than total numbers of polling were found. Certain ballot papers were not stamped or signed on the back, but they were not treated invalid. The possibility of rigging could not be ruled out. The result sheets and consolidated result-sheets were prepared and were fed into the computer but printout was not taken out, and so it was not possible to verify. The petitioner could see discrepancies in the figures he received from his agents and those declared by the Returning Officer. The Returning Officer granted time upto 2.30 p.m., but it was too short to make the application setting out therein exhaustively and elaborately the grounds for recounting. However, the petitioner and his agents submitted the application on 9-5-96 at 2.30 p.m. For recounting. The Returning Officer asked to substantiate, but it was not possible at that time to call all of his agents, few could be produced before him, but the Returning Officer did not record their statements and rejected the application. He then did not wait though requested to, till the Election Commissioner, who was moved for issuance of necessary order, informed him or the petitioner, but the Returning Officer at 00.30 hours on 10-5-96 declared the result. There were thus material irregularities and illegalities in counting of votes and so the result of the election was materially affected. In fact, the petitioner received more valid votes than the respondent No. 2, his nearest rival, but due to faulty counting he lost, and respondent No. 2 was declared elected. Alleging such facts in the petition, the petitioner has prayed for, setting aside the decision of Returning Officer refusing to grant recounting, ordering to recount and declare the result, quashing the order of Returning Officer declaring respondent No. 2 duly elected and further declaration that election of respondent No. 2 is void, while he has been duly elected. The petitioner has also prayed for other consequential and allied reliefs.

3. The respondent No. 2—the returned candidate filed his written statement at Exh. 21 denying every allegation specifically and submitting further that entire election process in wider term was carried out strictly as per law and procedure; no mistake was made. The entire process suffers from no infirmity. After being defeated, the petitioner came out with not only vague and general but afterthought case also. The respondent Nos. 27 to 32 were neither necessary nor proper parties. The copies supplied were not correct and complete. The copies of Vakalatnama, video-cassette, compendium etc., were not supplied. Material facts about faulty counting or rigging were not specifically with details stated. The copy of the list of documents filed was not given. The verification of the pleadings was defective. The facts constituting cause of action ought to have been pleaded. During the process of election at no stage protest was lodged or objection was raised. He at last urged to dismiss the petition with costs.

4. The respondent No. 8 filed his written statement Exh. 27. He has denied every allegation and has urged to dismiss the petition. In short, he has raised the same pleas, already raised by the respondent No. 2.

5. Raising likewise pleas in short in written statement, Exh. 23 to those of respondent No. 2, the respondent No. 14 has also denied every allegation and urged to dismiss the petition.

6. The Election Commission of India, Returning Officer, District Treasury Officer and Sub-Treasury Officers were initially joined as respondent Nos. 27 to 32. Passing necessary order below the application (Exh. 29), they are deleted.

7. Rest of the respondents have not filed any written statement and have thought it wise to sit on the fence.

8. In view of such rival pleadings of the parties, following issues are framed at Exh. 31 :

1. Whether the petition is hit by Section 86 of the Representation of Peoples' Act, 1951, owing to non-compliance of the provisions of Section 81, 82 and 83 of the Act?
2. Whether the petition is hit by Section 100 or 101 of the Representation of Peoples' Act, 1951, for not pleading the grounds specified therein?
3. Whether the petition is bad for misjoinder of any of the respondent Nos. 27 to 32? If yes—
4. What is its effect?
5. Whether the petition is liable to be dismissed on the ground that it was not accompanied with 32 copies of the petition, petition was not attested as true copy under the signature of the petitioner, and omission to furnish the complete and true copy as well as the copy of the Video Cassette and non-service of the instructions and the Compendium issued by the Election Commissioner?
6. Whether the petitioner is entitled to recounting of votes on the grounds pleaded?
7. Whether respondent No. 2 is entitled to recrimination in case of counting?
8. Whether the petitioner is entitled to any of the reliefs claimed?
9. What Order?"

9. After the above issues were framed, the respondent No. 2 filed the application (Exh. 32) and urged to treat certain issues preliminary and try the same first as the petition was not tenable in law. Necessary order was passed on 20-12-96. Issue Nos. 1 and 2 were then ordered to be treated as preliminary issues and tried first. The respondent No. 2 also urged to reject the petition under Order 7, Rule 11, Civil Procedure Code as no cause of action was disclosed for want of necessary facts.

10. The petitioner has challenged the election on the ground of faulty counting of votes alleging that owing to serious illegalities and irregularities in counting of votes he lost and respondent No. 2 came to be elected. The respondent No. 2 has assailed the petition contending that though election is called in question the petition is not presented in accordance with law. The petitioner failed to comply with the provisions of the ROPA, and because of non-compliance the petition suffers from inherent defects. Consequently it is liable to be summarily disposed of without trial on merits. Mr. Vakharia, the learned advocate representing the respondent No. 2 has then pointed out what were the inherent defects making the petition a torpid, vapid, and a dead-wood. Suffice it to say at this stage that the petitioner's learned advocate has endeavoured to show that there is neither defect or deficiency, and respondent's shrewd attempt to encumber and throttle the petition at the threshold by carping is required to be frowned upon.

11. Before I proceed to dissect the merits of the rival contentions, it is necessary to bear in mind the cardinal principles. The election of a successful candidate is not to be interfered with lightly and the verdict of the people-electorate upset,

not even on the ground that the petitioner lost by a narrow margin of votes. When election of Rajya Sabha, Lok Sabha or Vidhan Sabha or the President or Vice-President is challenged, one should not miss to note that the ROPA is a complete Code in itself for challenging the election, and the same can be challenged only in the manner provided for by the ROPA. Hence, the provision of the ROPA and Rules made thereunder are required to be strictly observed because the election contest is not an action at law or a suit in equity, but it is a purely statutory proceedings unknown to the common law. The pleadings are therefore to be strictly viewed and not liberally. For such view a reference of a decision in the case of Arun Kumar Bose vs. Mohd. Furkhan Ansari and Others (1984) 1 SSC 91 may be made. The relevant provisions of the ROPA sought to be invoked may be quoted first:

"Sec. 86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117."

Explanation.—xxx	xxx	xxx	xxx
(2)	xxx	xxx	xxx
(3)	xxx	xxx	xxx
(4)	xxx	xxx	xxx
(5)	xxx	xxx	xxx
(6)	xxx	xxx	xxx
(7)	xxx	xxx	xxx

Sec. 81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.—xxx	xxx	xxx	xxx
(2) [Omitted].			
(3) "Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition".			

Sec. 82.—Parties to the petition.—  
(Not relevant in this case).

Sec. 83. Contents of petition.—(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings;

Section 100 Grounds for declaring election to be void.—  
(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

- (a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by



any other person with the consent of a returned candidate or his election agent ; or

- (c) that any nomination has been improperly rejected ; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
  - (i) by the improper acceptance of any nomination, or
  - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
  - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
  - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

- (a) xxx      xxx      xxx
- (b) xxx      xxx      xxx
- (c) xxx      xxx      xxx
- (d) xxx      xxx      xxx

then the High Court may decide that the election of the returned candidate is not void.

Section 101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion—

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes ; or
- (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes.

the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

It may be noted that Section 86 (1) is not attracted if there is non-compliance of Section 83 of the ROPA and so on the ground of non-compliance of Section 83, the petition u/s. 86 of the ROPA cannot be dismissed. The Supreme Court has, in the case of Manohar Joshi Vs. Nitin Bhaurao Patil (1996) 1 SCC 169, held that Section 86 being in the nature of a penal provision, the same has to be construed strictly confined to its plain language. Section 86 empowers the High Court to dismiss an election petition at the threshold if it does not comply with the provision of Section 81 or Section 82 or Section 117 of the ROPA. The patent defects evident on a bare examination of the election petition as presented are to be considered. If the ground of non-compliance of Section 83 is considered to be the ground envisaged by Section 86 it would amount to misreading Section 86. It may however be noted that in the case of Lalit Kishore Chaturvedi vs. Jaedish Prasad Thada 1990 Supp. SCC 248 AIR 1990 S.C. 1731, it is made clear that even if there is no mention about Section 83 in Section 86. Order 7 Rule 11, Civil Procedure Code can be applied to dismiss the petition not disclosing a cause of action. For the present, therefore, I will confine to Section 86(1) and Section 81 of the ROPA. While dealing with the rival submissions on Order 7 Rule 11, Civil Procedure Code, requirements of Section 83 can be taken into account

12. How the petition is required to be thrown off at the initial stage is pointed out by Mr. Vakharia, the learned advocate for the respondent No. 2, keeping Section 81, Section 100(1)(d)(iii) and (iv) and 101 of the ROPA in mind. It is important first to bear in mind the pronouncements of the Apex Court making the law clear. From different decisions, relevant observations or portions in full being of considerable significance may be extracted for meritorious consideration. In the case of Satya Narain Vs. Dhruja Ram and Others AIR 1974 S.C. 1185, it is held :

Section 81(3) is mandatory and non-compliance with it results in dismissal of the election petition."

xxx      xxx      xxx      xxx

"The right to challenge an election is a special right conferred under a self-contained special law and the court will have to seek answer to the questions raised within the four corners of the Act and the powers of the court are circumscribed by its provisions. An election petition cannot be equated with a plaint in a civil suit."

"The purpose of enclosing the copies of the election petition for all the respondents is to enable quick despatch of the notice with the contents of the allegations for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election petition is presented. If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. The first part of Section 81(3) is therefore, a peremptory provision and total non-compliance with the same will entail dismissal of the election petition."

"In the absence of any provisions under the Act or the rules made hereunder, the High Court Rules cannot confer upon the Registrar or the Deputy Registrar any power to permit correction or removal of defects in an election petition presented in the High Court beyond the period of limitation provided for under the Act."

What is held in the case of M. Karunanidhi v. H. V. Handa and Others, etc., AIR 1983 S.C. 556, is that :—

"In an election petition it was averred that the returned candidate was guilty of corrupt practice under sub-section (6) of Section 123 of the Act by incurring or authorising expenditure in contravention of Section 77. It was alleged that he had failed to disclose certain items of expenditure in his statement of election expenses filed by him in connection with the election. The allegation related to an expenditure of about Rs. 50,000 in electing fancy banners throughout the constituency and it was alleged that there were such fancy banners about 50 in number, the cost of each banner being not less than Rs. 1,000. It was averred that a photograph of one such banner was filed along with the petition. Though the petitioner had filed with the election petition a photograph of one such banner, a copy of the photograph was not annexed to the copy of the petition furnished to the returned candidate.

Held that the photograph was a part of the averment contained in the petition. In the absence of the photograph the averment contained in the petition would be incomplete. The photograph was therefore an integral part of the election petition. It follows that there was total non-compliance with the requirements of sub-section (3) of Section 81 of the Act by failure to serve the appellant with a copy of the election petition. The words "copies thereof" in sub-section (3) of Section 81 read in the context of sub-section (2) of Section 83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein."

While dealing with the point on mistakes in the election petition, the Supreme Court in the case of *Mithilesh Kumar Pandey v. Baidyanath Yadav and Others*, AIR 1984 S.C. 305, observed and held :

"Before an election petition can be entertained, the copy sent to the elected candidate must be a true copy, failing which there would be a serious disobedience of the mandate contained in Section 81(3) which would be fatal to the maintainability of the said petition. To determine the question of non-compliance of Section 81(3) the following principles are well established,

- (1) That where the copy of the election petition served on the returned candidate contains only clerical or typographical mistakes which are of no consequence, the petition cannot be dismissed straightway under Section 86; (2) A true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the court may not take notice thereof; (3) Where the copy contains important omissions or discrepancies of a vital nature which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been a substantial compliance of the provisions of Section 81(3) of the Act; (4) *Prima facie*, the statute uses the words "true copy" and the concept of substantial compliance cannot be extended too far to include serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy within the meaning of Section 81(3) of the Act; and (5) As Section 81(3) is meant to protect and safeguard the sacrosanct electoral process so as not to disturb the verdict of the voters, there is no room for giving a liberal or broad interpretation to the provisions of the said Section."

"In the instant case there were allegations of corrupt practices. Sch. I to the election petition contained the list of persons through whom the corrupt practices were alleged to have been committed. In the copy of the petition supplied to the returned candidate there were mistakes as regards the names of the persons in the aforesaid list, viz. complete omission of some names which have been mentioned in the election petition but not in the copy, giving wrong names, and some names given in the petition appear to be males but in the copy they appear to be females."

"Held that, the mistakes in the copy of election petition were vital and would seriously prejudice the defence. In the circumstances the election petition was liable to be dismissed *in limine*."

In the case of *Bishambhar Nath Pandey and others, vs. Raj Narain and others* AIR 1984 S.C. 955, with regard to supply of incorrect copy of the petition the Supreme Court has held :

"A perusal of Sections 81(3) and 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if an election petitioner disregards the mandate contained in Section 81(3) by filing incorrect copies, he takes the risk of the petition being dismissed *in limine* under Section 86. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one. It amounts to non-compliance of the provisions of Section 81(3) which is sufficient to entail a dismissal of the election petition at the behest."

"The mandate contained in Section 81(3) cannot be equated with Section 537 of the Code of Criminal Procedure which makes certain omissions as a curable irregularity. No such concept can be imported into the election law because the object of the law is that the electoral process should not be set at naught and an elected candidate

should not be thrown out unless the grounds mentioned in the Act are clearly and fully proved. The doctrine of benefit of doubt cannot be invoked to cure the non-compliance of the mandatory provisions of Section 81(3)."

About the petition and copies to be supplied along with the petition, the law is made clear in the case of *Manohar Joshi vs. Nitin Bhaurao Patil and another* (1996) 1 SCC 169 (Supra) and it is :

"The distinction brought out in the above decisions is that in a case where the document is incorporated by reference in the election petition without reproducing its contents in the body of the election petition, it forms an integral part of the petition and if a copy of that document is not furnished to the respondent with a copy of the election petition, the defect is fatal attracting dismissal of the election petition under Section 86(1) of the R.P. Act. On the other hand, when the contents of the documents are fully incorporated in the body of the election petition and the document also is filed with the election petition, not furnishing a copy of the document with a copy of the election petition in which the contents of the document are already incorporated, does not amount to non-compliance of Section 81(3) to attract Section 86(1) of the R.P. Act. In other words, in the former case the document filed with the election petition is an integral part of the election petition being incorporated by reference in the election petition and without a copy of the document, the copy is an incomplete copy of the election petition and, therefore, there is non-compliance of Section 81(3). In the other situation, the document annexed to the petition is mere evidence of the averment in the election petition which incorporate fully the contents of the document in the body of the election petition and, therefore, non-supply of a copy of the document is mere non-supply of a document which is evidence of the averments in the election petition and, therefore, there is no non-compliance of Section 81(3). In *U. S. Sasidharan*, this distinction is clearly brought out as under; (SCC p. 439, paras 15 and 16)."

"The material facts or particulars relating to any corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied inasmuch as by making a reference to the document and without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition. Section 81(3) provides for giving a true copy of the election petition. When a document forms an integral part of the election petition and a copy of such document is not furnished to the respondent along with a copy of the election petition, the copy of the election petition will not be a true copy within the meaning of Section 81(3) and, as such, the court has to dismiss the election petition under Section 86(1) for non-compliance with Section 81(3)."

On the other hand, if the contents of the document in question are pleaded in the election petition, the document does not form an integral part of the election petition. In such a case, a copy of the document need not be served on the respondent and that will not be non-compliance with the provision of Section 81(3). The document may be relied upon as an evidence in the proceedings. In other words, when the document does not form an integral part of the election petition, but has been either referred to in the petition or filed in the proceedings as evidence of any fact, a copy of such a document need not be served on the respondent along with a copy of the election petition."

In the present case, the video cassettes, non-supply of a copy of transcript of which is urged by Shri Jethamalani to be a ground for non-compliance of Section 81(3), were not even filed in the High Court with the election petition in the High Court. This is, therefore, not a case of non-supply of a copy of a document which was filed along with the election petition. What was supplied to the returned candidate in the present case, was a true copy of the election petition as it was presented in the court without the video cassettes of which mere mention was made without incorporating its contents by reference or enumerating it in the election petition. It is not the case of the election petitioner that the full contents of the video cassettes or their transcripts are incorporated by reference in the election petition in order to make the video cassettes an integral part of the election petition, inasmuch as no video cassettes was filed along with the election petition as it was presented in the High Court. Reliance is placed by the election petitioner on the video cassettes produced later during the trial as only evidence of the pleading in paras 32 and 33 of the election petition. It is, therefore, clear that the contents of the video cassettes, except to the extent pleaded in paras 32 and 33 of the election petition, cannot be treated to be incorporated by reference in the election petition as a part of the pleadings and its use is sought to be made by the election petitioner only as evidence of the averments contained in paras 32 and 33 of the election petition. Admittedly, a true copy of the election petition as presented in the High Court was furnished to the returned candidate along with the notice of the election petition. There was thus no non-compliance of sub-section (3) of Section 81 of the R.P. Act. The election petition was, therefore, not liable to be dismissed under Section 86(1) even on the ground of non-compliance of Sections 81(3) of the R.P. Act."

The view of the High Court of Punjab and Haryana in the case of Iqbal Singh v. Avtar Singh and others AIR 1993 Punjab and Haryana 314 is that :

"Where the copy of the affidavit accompanying the copy of the election petition which was supplied to the returned candidate did not carry (i) the endorsement "affirmed and signed before me", (ii) the designation and name of the Notary; and (iii) the stamped endorsement regarding affirmation by the Notary, the copy of the petition supplied to the returned candidate could not be said to be a true copy within the meaning of sub-section (3) of Section 81 in the absence of the endorsement on the affidavit. The absence of endorsement by the Notary on the copy of the petition supplied to the returned candidate, could not be said to be only a clerical or typographical mistake. On the contrary, the defect was substantial and it could cause prejudice to the returned candidate, who is not expected to wade for the original record."

The education of such pronouncements is that Sec. 81(3) being mandatory, non-compliance thereof is incurable and will entail dismissal of the petition at the threshold. To put in other words, non-compliance of Sec. 81(3) is fatal. The election petition therefore cannot be equated with plaint, the petition is to be strictly viewed. It is hence incumbent upon the petitioner to supply the correct copy of the petition to the other side. On failure to supply the correct copy, the petitioner takes a risk of petition being dismissed in limine. If the document is the integral part of the petition and its contents are not fully incorporated in the pleadings, omission to supply the correct copy thereof would

amount to non-compliance of Sec. 81(3) of the ROPA. If there is neither material or important omission nor vital discrepancies, the copy of the petition or document supplied cannot be branded as incorrect copy giving rise to fatal consequences.

13. Initially, there were in all 32 opponents and so the petitioner had to supply 32 copies of the petitions along with the documents annexed thereto. The office had checked the numbers of copies but no shortage could be noticed. Neither of the opponents has complaint about non-receipt of the copy of the petition. Prima facie therefore, there may not be any substance in the contention raised on behalf of opponent No. 2 that the petitioner has not supplied the copies equivalent to the numbers of the opponents. However it is a matter of evidence being a question of facts and covered by issue No. 5.

14. The rubber stamp not properly legible is used for attestation assuring the copy of the petition to be the true copy. It is two lined stamp; the first line composed of the words "True Copy" and second one below there is composed of the word "Advocate". Between the two lines there is a space for signature, and there the petitioner has put up his initial on every page of the petition and documents annexed thereto are accordingly attested. The copies supplied to the opponents are also accordingly attested. It seems, because of the use of the advocate's stamp, Mr. Vakharia, learned advocate for the opponent No. 2 was misled and induced to contend that the copies of the petition and documents supplied to the opponent No. 2 were not attested to be the true copies by the petitioner and so there was non-compliance of Sec. 81(3) of the ROPA. At the time of hearing, Mr. S. B. Vakil, the learned advocate for the petitioner dispelled the mistaken impression or belief clarifying that it was not his signature but the signature of the petitioner. The contention was then waived.

15. The copy of the vakalatnama of the advocate representing the petitioner is not given to the opponents. Mr. Vakharia, learned advocate for the respondent No. 2 has doubted the correctness of the copy of the petition supplied contending that for want of the copy of the vakalatnama, it would be difficult to know who is engaged as the advocate, to what extent he is authorised whether the signature that appears on the last page of petition is really the signature of the advocate engaged, and further it would be difficult to prepare the defence adequately. The contention being illusory and without any bearing, cannot be sustained. What is the integral part of the petition or case pleaded in the petition or what is referred to in the pleading and that too material or significant or vital and relevant is required to be made known to the other side supplying the copy, and not the copies of any other documents having no bearing, or foreign to

the subject matter, or relevance, or useless to determine the issues, and in no way implying the object of the ROPA, viz., quick despatch, no delay in the trial and progress of the case. The integral parts of the petition can be found in Sec. 83 of the ROPA enumerating the essential contents of the petition and are five, namely : (1) concise statement of the material facts on which the petitioner relies, (2) full particulars of the corrupt practice alleged (if that is the ground resorted to for challenging election), (3) affidavit in prescribed form in support of corrupt practice and particulars thereof (if corrupt practice is made ground to challenge election), (4) verification in the manner laid down in Civil Procedure Code, and (5) signature of the petitioner. While alleging material facts vital or significant facts and particulars of the documents throwing light on the propositions are referred to and relevant contents thereof are not fully incorporated in the petition, those documents can be said to be the integral part. The Vakalatnama is not the part of the above stated essential contents of the petition, and certainly not the document relevant to the case about irregularities and illegalities in counting of votes and prayer for recounting alleged. The vakalatnama being foreign to the subject matter does not assume characteristic of the integral part of the petition, or throwing light on the material facts and particulars. It is a contract simpliciter between the petitioner and the advocate, authorising the advocate to act, appear and plead on behalf of the petitioner and do all those necessary acts which the agent can in law do for the conduct of the petition and representation on behalf of the petitioner before the court. Even if the advocate has in the margin near to the verification put up his signature the vakalatnama does not become the integral part of the petition as the signature is put up so as to convey the other side that the advocate is engaged and who is that advocate and if required to pursue vakalatnama in the record of the case. In short, vakalatnama does not contain the material facts or particulars of the grounds on which the election is challenged. For want of the copy of the vakalatnama the defence in no way is impaired. Consequently omission to supply the copy of the vakalatnama to the other side cannot amount to supply of incorrect copy of the petition. The contention that the petition is liable to be dismissed for non-compliance of Sec. 81(3) of the ROPA therefore cannot be accepted. On such reasonings, it cannot be said that the copy of the petition supplied to opponents is incorrect because the list of the documents bears the signature of the petitioner's advocate and not of the petitioner.

16. Faced with such situation, Mr. Vakharia, the learned advocate for the respondent No. 2 drawing my attention to Rules Nos. 273, 276, 277, 278, 279, 280 & 281 of the Gujarat High

Court Rules—1993, contended that those rules qua vakalatnama were violated and so the petition was liable to be rejected without further hearing or progress in the matter. These rules may be quoted.

"273. The petition and the documents to be annexed thereto shall be either printed or typewritten neatly and legibly with sufficient space between lines on strong and durable fullsize paper or other paper similar to it in size and quality and with an inner margin of not less than 5 cms. The following documents shall be annexed to the petition viz. (1) Vakalatnama, (2) List of Documents upon which petitioner relies and (3) Copies of Schedules or Annexures. The petition and the aforesaid documents shall be stitched together bookwise in the following order—

(1) Petition; (2) Vakalatnama; (3) List of Documents upon which the petitioner relies and (4) Copies of Schedules or Annexures. Dates and sums occurring in the petition shall be expressed in figures and the sums also in words. When Indian dates are given the corresponding Gregorian Calendar (English) Dates shall always be added."

274. XXX XXX XXX XXX

275. XXX XXX XXX XXX

"276. The petition, in addition to the court fees prescribed therefore, shall bear court fee stamp of process fees for service of summons on all the respondents at the rate of Rs. 2.50 for each respondent to be served. The petition shall as required under Section 81(3) be accompanied by as many copies as there are respondents and every such copy shall be attested by the petitioner under his own signature to be true copy of the petition."

"277. The petition shall be presented in the office of the Registrar or to such person as the Registrar may, by general or special order authorise, ordinarily between 10.30 a.m. to 4.00 p.m. The petition presented on the last day of limitation and the petition requiring any urgent orders may be accepted after 4.00 p.m. upon an order in that behalf passed by the Assistant Registrar."

"278. The presentation of petition by the petitioner, not represented by an Advocate, shall be made by the petitioner in person."

"279. The presentation of any petition on behalf of a party represented by an Advocate shall be made by such Advocate personally or by another Advocate on his behalf or by his recognised Clerk."

"280. The Advocate presenting the petition, shall produce Vakalatnama signed by the petitioner authorising him to do so and accepted by the Advocate in writing under his signature, or the Advocate shall make a statement in writing that he has been authorised by the petitioner to present the petition, with an undertaking to produce a regular Vakalatnama within two weeks from the date of presentation. The address of the Advocate shall be stated in such Vakalatnama, petition or written statement and any subsequent change in the Advocate's address during the pendency of the petition shall immediately be communicated by the Advocate to the Office. Communication sent by post by the office at the said address, shall be presumed to have been received by the Advocate."

"281. Every Vakalatnama specified in Rule 285 shall before it is filed in Court bear an endorsement of acceptance signed by the Advocate concerned or by any other Advocate for him provided the former acknowledges and ratifies the acceptance of the appointment within four days from the date of its being filed in the Court."

As required under Rule 273, the petition and documents are neatly and legibly typewritten on durable fullsize paper with inner margin and the documents mentioned are annexed in the order indicated therein. Required court fees are paid and as discussed above requisite copies of the petition duly attested are furnished as per Rule 276. The petition was presented in the office of the Registrar of the High Court between the timings stated, by the advocate engaged by the petitioner. Thus Rules 277, 278 & 279 are also complied with. To comply with, the Rule 280-281 vakalatnama (Ex. 19) signed by the petitioner and accepted by his advocate is produced. Thus all the rules made the base for advancing argument are complied with. No rule specifically lays down to furnish the copy of the vakalatnama to the opponents. But that apart, even if it is assumed for a while that breach of any of the rules pointed out is committed, the opponent No. 2 does not gain a ground to stand upon. On noticing the breach of either of the aforesaid Rules the petition cannot be thrown over board because the election is to be challenged or the opposite party has to defend remaining only within the four corners of the ROPA or Rules made thereunder. If the Rules of procedure in addition to the provisions of the ROPA or Rules thereunder are

framed for keeping everything in order and for smooth and speedy progress in the matter and to check delay, but not within the ambit of the provision of the ROPA empowering the High Court to frame Rules, the breach of such rule will not have fatal effect or penal consequences because in that case the breach i.e. non-compliance would not amount to illegality, but should be treated to be the curable irregularity. To hold that breach of the High Court Rules is fatal, would amount to incursion of sound principle of law that the Rules under the Act cannot run counter to the principal Act, or cannot have the effect of obliterating or outrooting the Act, or cannot outrival the principal Act. The High Court of Gujarat has no doubt framed the aforesaid Rules, and so it is necessary to know whether any of the provisions of the ROPA authorises to frame Rules and if so, on what points or stages of the proceedings concerning election matters. Sec. 117 of the ROPA empowers the High Court to frame Rules with regards to the deposit of security amounts for the costs of the petition and on no other point. The Rules framed are therefore the Rules of procedure simpliciter in addition to but not under the ROPA or Rules made thereunder, and so cannot have the fatal effect or penal consequences. The contention advanced therefore if accepted will have predominating effect over the ROPA because as observed above the ROPA or Sec. 81(3) of the ROPA does not mandate that if the copy of the vakalatnama is not given to the opponent, the petition is liable to be dismissed in limine. The contention therefore fails.

17. It is alleged by the petitioner that the counting process was videoed. The videoed cassette is not produced and copy of transcript of such cassette is not given to the opposite party. Hence, Mr. Vakharia, the learned advocate got the cause to argue that failure to supply the transcript of video cassette, the integral part of the petition, was fatal, and on that count the petition was liable to be dismissed. The contention has to be viewed with disfavour. The copy of every document referred to in the pleadings is not required to be supplied. As observed above the copy of the relevant document, i.e. integral part of the petition throwing light on the propositions or issues to be determined as well as within the possession or reach of the petitioner is to be supplied to the opposite party. If the document is sought to be used as evidence of the averments made in petition, the copy thereof need not be supplied along with the petition.

18. At page 29 of the petition, it is averred that Returning Officer did not call for the video record though proceedings in the returning officer's room were being videographed. At page 31 what is averred is that though the counting process were substantially videographed, the returning officer did not call for the same and gave to the petitioner an opportunity to rely upon the same. At page 33 the petitioner has urged to restrain the Election Com-

missioner, Returning Officer and the District Treasury Officer from tampering, removing, damaging or destroying the same. From such plea, it becomes clear that the petitioner is not in possession of the video cassette and it is not within his reach to procure the same and supply the transcript thereof to the opponents. Hence what is not possible, the petitioner cannot be compelled to do. In such cases, if it is necessary the court can direct the concerned authority to produce the same. Further, videofilm would show the counting process but would not be helpful to decide whether there was illegality or irregularity in counting of vote, i.e. whether particular vote was improperly received or refused or rejected, or reception of any vote was void. The video-cassette therefore will not throw light on the issues to be decided. The same is not the relevant document. From the above averments in the petition it follows that the petitioner intends to use the video-cassette as the evidence of the averments made in the petition. In view of the fact failure to supply the copy of the transcript of the cassette cannot be held to be fatal.

19. The compendium is an abridgement or summary of Election Rules and instruction on conduct of elections. Para 24 of the compendium is referred to in the petition, but the copy of the compendium is not supplied to the opposite parties. Whether non-supply is fatal is the point raised before me. The copies of the documents relevant for consideration and referred to in the pleadings are to be supplied if relevant contents or portions thereof are not fully reproduced in the pleadings so that the other side unknown to the same may know and prepare adequate defence, but what with reasonable certainty is expected to be in the possession or knowledge of the other side, failure to supply the copy thereof will not be fatal. The Election Rules or rules/instruction on the conduct of elections are published by the Government or Election Commission and available at Govt. Book stalls, or from returning officer. Every candidate is certainly supposed to know the same. When that is so, non-supply of the copy of the compendium is not fatal under Sec. 81(3) of the ROPA. However, it may be mentioned that the Instructions relied upon are reproduced in the petition at pages 14, 21, 23, 24 in full and so non-supply of the compendium is not fatal.

20. Who should be the parties to the petition is provided vide Section 82 of the ROPA. Under that provision, the petitioner who is the candidate challenging the election and other candidates contesting the election are the necessary parties and if there is allegation of corrupt practice against any other candidate then he is necessary party. In this case, all the contesting candidates are joined as respondents No. 1 to 26. Thus the requirement of Section 82 is complied with and the petition is not therefore bad for defect of joinder of the parties. I will now switch over to the another point based on Order VII Rule 11, C.P. Code and Section 83 of the ROPA.

21. The petition is sought to be dismissed under Order VII Rule 11, C. P. Code contending that mate-

rial facts required to be stated under Section 83 of the ROPA are not pleaded in the petition and so no cause of action is made out. As the issue about applicability of Order VII, Rule 11, C. P. Code is not framed, Mr. Vakil, learned advocate for the petitioner was reluctant to submit, however he was called upon to submit if he so chose to meet with the contentions advanced by Mr. Vakharia, learned advocate representing the respondent No. 2. He then submitted that Order VII Rule 11 or Section 83 would not apply and it would not be just to throw the application overboard holding that by omitting to plead material facts, cause of action was not made out. According to him the pleadings were required to be leniently viewed. It may again be stated here that the pleadings in the petition are to be strictly examined. The petitioner cannot plead vaguely or in synonyms. He should be unambiguous, clear, precise and specific because it should be noted that evidence outside the pleadings is not allowed. Fulllest possible requisite facts available to the petitioner are to be stated. If a single material fact is left out it would be fatal. The cause of action must specifically be pleaded in fundamental, and so material facts mean facts necessary for the purpose of formulating a complete cause of action. To find out the answer to a question as to what is material facts one has to see what is the meaning of cause of action. The 'cause of action' means the whole bundle of material facts which it is necessary for petitioner to prove in order to entitle him to succeed. In other words, the 'cause of action' means every fact which it would be necessary for the petitioner to prove if traversed in order to support his right to the judgment of the court but not every piece of the evidence. However, it will be better if certain authorities, making the law clear on material facts to be pleaded, are referred to. In the case of Samant N. Balakrishna v. George Fernandez and others, AIR 1969 S. C. 1201, it is held :

"Section 83 is mandatory and requires the election petition to contain first a concise statement of material facts and then requires the fullest possible particulars. The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. The material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must

be correlated to one of the heads of corrupt practice. An election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information."

In another case of *Arun Kumar Bose v. Mohd. Furkan Ansari and others*—AIR 1983 SC 1311, it is made clear keeping Section 83(1)(a), 100 and Section 101 in mind that if in the election petition, number of wrongly rejected ballot papers are furnished and as well as the number of the counting table is given and booth number is disclosed coupled with the grounds for rejection are also pleaded, but particulars of ballot papers were not shown as they were not available during counting, it was held that pleadings set out the material facts and no defects could be found with it. In another case of *Azhar Hussain v. Rajiv Gandhi*—AIR 1986 S.C. 1253 about the material facts and particulars, it is observed as under :

"Where the corrupt practice alleged in the election petition was that a Gazetted Officer appeared on the Govt. controlled news media and made a speech praising the elected candidate and all that was stated was that services of the gazetted officer were procured and obtained by the elected candidate his agents and other persons with the consent of the candidate with a view to assist the furtherance of the prospects of his election, it could not be said that 'essential facts which would clothe the petition with a cause of action and which will call for an answer from the returned candidate were pleaded.' It was not mentioned as to who procured or obtained the services of the gazetted officer, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the elected candidate. Nor was it shown which, if any, facts went to show that the speech was in furtherance of the prospects of the elected candidate's election. The petitioner also did not disclose the exact words used in the speech; or the time and date of making such a speech, unless the relevant or offending passage from the speech is quoted it cannot be said what exactly was said, and in what context, and whether it was calculated to promote the election prospects of the elected candidate."

Again when the question about pleading material facts arose in the case of *Bhagwati Prasad Dixit (Chorewala) v. Raieev Gahli*—AIR 1986 S. C. 1534. It is held that in the election petition if the

pleadings are vexatious, frivolous and not disclosing cause of action, the same is liable to be dismissed in limine as material facts constituting the cause of action cannot be said to have been pleaded clearly and specifically. The High Court of Punjab & Haryana in the case of *Iqbal Singh v. Avtar Singh and others*—AIR 1993 Punjab & Haryana 314, has held as under :

"Where an election is challenged on ground of corrupt practice all the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of S. 83(1)(a). The omission of single material fact would lead to an incomplete cause of action and an election petition without the material facts relating to a corrupt practice is not an election petition at all. The election petition, therefore, can be dismissed if it suffers from any such vice. Even in an ordinary civil litigation, the Court readily exercises its powers to reject the plaint if it does not disclose any cause of action. The pleadings regarding the charge of corrupt practice are regulated by S. 83 and it makes it obligatory on the election petitioner to give requisite facts, details and particulars of each corrupt practice with exactitude. The allegations of corrupt practice are in the nature of criminal charge, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of election petition cannot proceed for want of cause of action. The law forbids a fishing and roving inquiry."

When again the question about the facts to be pleaded in the election petition arose in the case of *Charan Dass v. Surinder Kumar and Others*—1995 Supp (3) S.C.C. 318, it is held that when the election is challenged on the ground of wrongful counting in the absence of allegation that the election result was thereby materially affected, allegations of wrongful counting even if taken to be correct, would not warrant setting aside the election. In the case of *Manohar Joshi v. Nitin Bhaurao Patil* (Supra). It is held that in election petition, ingredients constituting corrupt practice must be pleaded and proved otherwise the petition cannot be sustained. In another case of *U.S. Sasidharan v. K. Karamakaran* and another—AIR 1990 S.C. 924, it is made clear that in election petition the petitioner has to set forth material facts constituting corrupt practice. In the case of *N. Narayanan v. S. Semmalal and others*—AIR 1980 S.C. 206, again a question arose as to the facts to be pleaded and proof required, and making the law clear, it is held as under :

"The relief of recounting cannot be accepted merely on the possibility of there being an error. It is well settled that such allega-



otions must not only be clearly made but also proved by cogent evidence. The fact that the margin of votes by which the successful candidate was declared elected was very narrow, though undoubtedly an important factor to be considered, would not by itself vitiate the counting of votes or justified recounting by the Court.

The Court would be justified in ordering a recount of the ballot papers only where :

- (1) the election petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded;
- (2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting ; and
- (3) The Court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties "

From all these decisions, what can be deduced is that in case where irregular or illegal counting is alleged to have been made affecting the result of the election, it is incumbent upon the petitioner to give fullest possible particulars namely number of the ballot papers wrongly rejected, provided of course the information is available; counting table number, booth number and grounds of rejection or reception of votes must be pleaded. Simply to allege that there were irregularities and illegalities in counting the votes cannot meet with the requirements of law. In this case, recounting is also prayed for and therefore when recounting can be ordered has to be pleaded but before what type of pleadings should be there. I think it proper to mention some of the pronouncements of the Apex Court, on the point of counting and recounting over and above few of the above decisions. In the case of *Km. Shradha Devi v. Krishna Chandra Pant* and other—AIR 1982 S.C. 1569, what is made clear is as under :

"In an election petition for relief of scrutiny and recount on the allegations of miscount, it is not the requirement of law that in respect of each ballot paper rejected as invalid a specific averment must be so made as to identify the ballot paper and only those that can be correlated to the allegations in the petition specifically and not generally shall be recounted."

"When a petition is for relief of scrutiny and recount on the allegation of miscount, the petitioner has to offer prima facie proof of errors in counting and if errors in counting are prima facie established a recount can be ordered. If the allegation is of improper rejection of valid votes which is covered by the broad spectrum of scrutiny and recount because of miscount, petitioner must furnish prima facie proof of such error. If proof

is furnished of some errors in respect of some ballot papers, scrutiny and recount cannot be limited to those ballot papers only. If the recount is limited to those ballot papers in respect of which there is a specific allegation of error and the correlation is established, the approach would work havoc in a Parliamentary constituency where more often 10,000 or more votes are being rejected as invalid. Law does not require that while giving proof of prima facie error in counting each head of error must be tested by only sample examination of some of the ballot papers which answer the error and then take into consideration only those ballot papers and not others. This is not the area of inquiry in a petition for relief of recount on the ground of miscount."

In the case of *Bhabhi v. Sheo Govind and others*—AIR 1975 S.C. 2117, law is made clear as under :

Before the Court can order inspection of ballot papers, in an election petition the following conditions are imperative.

- (1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;
- (2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;
- (3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;
- (4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;
- (5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void ; and
- (6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount; and not for the purpose of fishing out materials.

If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper."

The question also arose in the case of *S. Raghubir Singh Gill v. Gurcharan Singh Tohra and others*—AIR 1980 S.C. 1362, and it is held as under :



"Recount cannot be ordered just for the asking. A petition for recount after inspection of the ballot papers must contain an adequate statement on material facts on which the petitioner relies in support of his case and secondly the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete justice between the parties an inspection of the ballot papers is necessary. The discretion conferred in this behalf should not be exercised in such a way so as to enable the applicant to indulge in a removing inquiry with a view to fishing out materials for declaring the election void. Only on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a purpose of fishing out materials."

As held in the case of *P.K.K. Shamsudeen v. K.A.M. Mappillai Mohindeen & Others*—1989 S.C. 640 for ordering recounting of votes, there must be necessary averments so as to prima facie satisfy for exercise of a discretion to order recount coupled with evidence. The order on recount cannot be justified on the result of recount of votes. About the applicability of Order VII, Rule, Civil Procedure Code, the Supreme Court has made it clear in the case of *Samar Singh v. Kedar Nath and others*—AIR 1987 S.C. 1926 as under :

"If an election petition does not disclose cause of action, it can be dismissed summarily at the threshold of the proceeding under Order 7 Rule 11 of the Code of Civil Procedure. If an election petition can be summarily rejected at the threshold of the proceeding the same can also be rejected of any stage of subsequent proceeding. If after framing of issues basic defect in the election petition persists (absence of cause of action) it is always open to the contesting respondent to insist that the petition be rejected, under, Order 7 Rule 11 and the Court would be acting within its jurisdiction, in considering the objection. Order 7 Rule 11 does not place any restriction or limitation on the exercise of Court's power; It does not either expressly or by necessary implication provide that power under Order 7 Rule 11 CPC should be exercised at a particular stage only. In the absence of any restriction placed by the statutory provision, it is open to the court to exercise that power at any stage only. In the absence of any restriction primary objection as to maintainability of the petition on the ground of absence of cause of action should be raised by the respondent as early as possible, but if a party raises objections after filing written statement the preliminary objection cannot be ignored. If the election petition does not disclose any cause of action, the respondent's right to raise objection to the maintainability of the petition, or the Court's power to consider the objection is not affected adversely

merely because the objection is raised after filing of written statement or framing of issues. The Court would be acting within its jurisdiction in exercise of its power under Order 7 Rule 11 in rejecting the same even after settlement of issues. AIR 1963 Guj. 79 overruled."

In the case of *Latit Kishore Chaturvedi v. Jagdish Prasad Thada*—1990 Supp SCC 246, the doubt about the applicability of Order 7 Rule 11, C.P. Code, that was prevailing has been removed holding that though Section 83 is not mentioned in Section 86 of the ROPA, the provisions of CPC can be applied to dismiss the petition if the petition does not disclose a cause of action. In the case of *Dula Dei & Others vs. Jaji Bewa and Others* AIR 1965 Orissa 113, it is made clear that ordinarily the court cannot grant the relief in case where there is no foundation in the pleadings and which the otherside is not called upon or at no particulars to meet. The law which is made clear by the above stated pronouncements on the point to plead material facts in the petition and consequence of failure to incorporate material facts and particulars in the petition can be summarised thus.

22. Whether to allow inspection and/or counting is certainly the discretion of the court because recounting cannot be ordered as a matter of course. The court has to be prima facie satisfied before discretion is exercised, that recount if allowed is going to have material effect on the result of the election, and effectual and full justice will be rendered between the parties, for it is important to maintain secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations. The court has to be satisfied prima facie regarding truth of the allegations made for recount. Unless material facts are pleaded, no question of prima facie case arises. The allegations must therefore be precise, clear and specific and must be supported by adequate statements of material facts on which allegations of irregularity or illegality in counting are based and not vague actuated by a desire to indulge in removing inquiry or fishing inquiry for declaring the election void and justify one's own claim. Mere suspicion of mistake in counting, narrow margin of votes, opportunity to check ballot papers and note down the particulars given, mistakes not pointed out immediately to the Returning Officer, grounds for recount stated before Returning Officer and pleaded in the petitions are different and do not tally. Simple allegation that some were wrongly rejected or accepted, the counting staff members were in great haste to finish counting or they were in great mental and physical strains and were not in fit state of mind without stating why they were in that condition, were giving some figures without source and impact on result materially affected or the ground or cause to pray for repoll and the like are not the grounds to order for recounting. For justifying recounting by way of material facts the petitioner has to allege precisely, specifically and pointedly and set out in the petition on which allegations of irregularity or illegality in counting are founded. Section 100 (d)(iii) of the ROPA provides that improper action, refusal or rejection of a vote or the recep-

any vote which is void is the ground available to challenge the election provided, the same has materially effected the result of the election. It will be the case of improper reception of vote if Returning Officer treats as valid vote which is liable to be rejected. It will be improper rejection of a vote if a valid vote has been wrongly rejected. The words "improper refusal of a vote" refer to tendered votes or challenged votes or wrongful refusal by the Returning Officer of the casting of a vote in contravention of the rules. He has, therefore, to state precise nature of objections and the ballot papers to which the objections relate, how there was miscounting, how many votes marked for the petitioner were wrongly rejected or declared invalid causing damage to him and grounds thereof, how many votes were wrongly accepted in favour of or counted for the elected candidate, what was the number of the table of counting, what was the booth number, how many votes were found tampered with, figures of voting by personating, dead or absentees giving particulars about dead or absentees, how many polled twice in favour of the elected candidate, whether any of the voters was illegally or against the rule prevented from casting votes, if so how many, or how many persons ineligible or disqualified or having no legal capacity to vote, voted, or how many were permitted to vote after polling time was over so as to favour the elected candidate etc. It will be possible to state specifically because either the candidate or his agent permitted to attend and supervise counting has ample opportunity to examine the ballot papers being counted. Whether numbers of the ballot papers or wrongly rejected or accepted votes should be pleaded is a debatable point. In the case of *Jitendra Bahadur Singh v. Krishna Rebari*—1969) 2 SCC 433. It is held that number of the ballot papers being material are required to be stated, while in the case of *Arun Kumar Bose v. Mohd. Furkan Ansari* (1984) 1 SCC 91, it is laid down that omission to state numbers of the ballot papers is not a defect so as to throw the petition overboard. In view of such conflicting views, recently in the case of *Jaagjit Singh v. Dharam Pal Singh and Others*—1995 Supp. (3) SCC 718, the Bench of the Court hearing the petition has referred the matter to a larger Bench. Hence no specific and definite view about the plea regarding mention of the numbers of the ballot papers can be expressed.

23. Perusing the petition, it is evident that there is general allegation made stating that there were irregularities and illegalities in counting of votes, but specifically, precisely and concisely as required in law no case is put forth. Of course my attention was drawn by the learned advocate representing the petitioner to certain paras of the petition which I will now be dealing with. Vide para 6. Section 59. Rule 38(1), Rule 39(2)(b) Rules 44, 45, 46, 47 are referred to and mandate thereof has been pleaded in short, but that para does not relate to counting or errors in counting. Vide para 8 also. Section 22, Section 64 of the ROPA, Rule 51. Rule 52 & certain provision of compendium qua counting are referred to. Therein also how the counting was irregular or illegal is not at all pleaded. In para 18, vague and general allegations are made mentioning that material illegalities and irregularities in counting of votes had materially affected

the result of the election and sufficient time to pray for recounting, filing objection or applicaiton was not given.

24. On query, Mr. Vakil, learned advocate representing the petitioner drew my attention to para 9 and submitted that the Rooms No. 33 & 35 wherein counting pertaining to Sayajigunj assembly constituency was carried out. The facts about overcrowding alleged in tabular form may be reproduced as under;

Sl. No.	Name of the Assembly Constituency	No. of Room for counting	No. of tables fixed	No. of counting agents permissible to a candidate
1.	146/Savli	17	14	14
2.	147/Baroda City	38	15	15
3.	148/Sayajigunj	33, 35	32	32
4.	149/Raopura	23	15	15
5.	150/Waghodia	9	14	14
6.	15./Baroda Rural	22	15	15
7.	152/Padara	2-Library Hall	15	15

On the basis of these facts in the table endeavour was made to see that there was overcrowding in each room. In each room there were even more than 200 persons, with the result it was difficult for the agent of the petitioner to supervise conveniently. Omission to provide proper facility for the purpose of supervising the counting process was specifically pleaded and petitioner could not be condemned for not mentioning the material fact. Neither of the candidates joined as respondents has stated before the court either by filing the written statement or orally that both the rooms were overcrowded and it was difficult to see the counting process and note down relevant facts. At one stage, it is pleaded that at a distance of 3 feet from the counting table beyond the mosquito net the agents were permitted to sit. When that is so, the plea that the room was overcrowded and it was difficult for the agents to supervise the counting and note down irregularities if any seem to be after thought.

25. In order to show that material facts were stated in the petition, my attention to para 10 was drawn, and especially to the facts, which can be tabulised as under :—

Sl. No. of Election of Assembly Constituency	Polling according to the Yadi	Votes Counted	Deficit Surplus
1. Savli	41,569	41,536	— 33
2. Baroda City	74,005	73,997	— 8
3. Sayajigunj	1,08,433	1,09,083	+ 650
4. Raopura	63,365	63,291	— 74
5. Waghodia	50,059	50,054	— 5
6. Vadodara Rural	47,209	47,209	Nil
7. Padara	52,586	51,688	— 698
Total:	4,37,226	4,37,068	— 158

Pointing out these facts, it was the endeavour on the part of the petitioner that in different assembly constituencies there were either deficit or surplus votes and overall there was deficit of 158 votes and these facts being material facts, petitioner could not be condemned for not having pleaded the necessary facts constituting the cause of action. Of course, the facts in the above table require investigation because the other side has challenged the genuineness thereof, but even if the same are assumed for a while to be prima facie correct, these facts cannot be described as material facts relating to the counting or errors in counting. Those facts may indicate bogus voting and that is a ground for repoll which should be prayed for at the proper stage, but certainly not the relevant facts for re-counting because whatever votes surplus or deficit were found, it is not the case of the petitioner that there was irregularity or illegality in counting the votes. On the basis of these facts tabled hereinabove, it also cannot be said that there was improper reception, refusal or rejection of votes which one has to plead as per Section 100 (1) (d)(iii) of ROPA.

26. The petitioner has not stated for how many ballot papers objections were raised and how many votes marked for the petitioner were wrongly rejected causing damage to the petitioner. It is also not stated how many votes were wrongly accepted and counted in favour of the respondent No. 2. The number of the table, the number of the booth are also not mentioned. It is not the case of the petitioner that by presenting dead or absentees votes were cast. It is also not mentioned whether the person legally incapable to vote, voted at a particular booth. In short, the necessary particulars qua the counting or miscounting are not pleaded and thereby cause of action is not made out. The petition, therefore does not disclose the cause of action and therefore under Order VII Rule 11 the petition requires to be rejected although the petition cannot be rejected u/s. 86 of the ROPA. In the case of Smt. Sahodrabai Rai v. Ram Singh Aharvar and others—AIR 1968 S. C. 1079 about the concise statement of material facts qua counting to be pleaded. It is held that numbers of votes improperly rejected, particular booth to which they relate, particular table at which the votes were counted and the grounds on which the votes were rejected, are required to be set out in petition.

27. It was possible for the agents of the petitioner to collect the necessary material particulars so as to plead stating in the petition the petitioner could not file the application for recount before the Returning Officer because at that time according to him all the agents were not available for collecting the particulars, but it was possible to collect necessary particulars from all his agents after the result was declared and before the petition was filed. He therefore cannot be allowed to submit that it was not possible for him to collect all necessary materials and plead in the petition.

28. It was also argued that at the there should under Order VII Rule 11, C. P. Code, the petition cannot be dismissed at least opportunity to lead evidence might be given. In the case of Mithilesh Kumar Pandey v. Baldyanath Yadav and others—AIR 1984 S.C. 305, Ashar Hussain v. Rajiv Gandhi —AIR 1986 S. C. 1253, and Bhagwati Prasad Dixit Ghorewala v. Rajiv Gandhi AIR 1986 S. C. 1534 (Supra). It is in clear, terms held that the election petition not disclosing the cause of action is liable to be dismissed in limine. To put it in different words, the election petition can be summarily dismissed if it does not furnish cause of action in the exercise of power under Civil Procedure Code and it is settled Law that the omission to plead even a single (material) fact would lead to an incomplete cause of action and the election petition without the material facts is not an election petition at all. It is also made clear that the contention that even if the election petition is liable to be dismissed, ultimately it could be so dismissed only after recording evidence and not at the threshold is thoroughly misconceived and untenable. It may be stated that parties have to lead evidence on the case pleaded. When in this case, material facts are not pleaded. It would not be open to the petitioner to lead evidence and convince the court how his case is genuine and acceptable because permitting him so to do would amount to departure from pleadings. In view of such law, the contention advance cannot be sustained.

29. In view of the foregoing reasons the petition cannot be dismissed under Section 86 for not complying with Section 81 and 82 of the ROPA, but when the case pertaining to irregularities and illegality in counting of votes and affecting his result as well as for recounting is not pleaded as per the requirements of law the petition is not the petition at all in the eye of law because cause of action is not made out and so the petition at the threshold is liable to be rejected. To proceed with fullfledged hearing would amount to removing inquiry not permitted in law. In the result, though issues Nos. 1 and 2 cannot be answered in the affirmative the petition not disclosing cause of action is liable to be rejected under Order VII Rule 11, Civil Procedure Code. The petition of accordingly rejected with costs.

[No. 82/GJ-HP/(1/96)/98]

By Order,

ANUP K. PUJARI, Principal Secy.

